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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

VAATAUSILI MARK ALAIMALO,)	No. CV-F-05-300 REC/SMS HC
)	
)	ORDER GRANTING CERTIFICATE
)	OF APPEALABILITY
Petitioner,)	
)	
vs.)	
)	
PAUL SCHWARTZ, Warden,)	
)	
)	
Respondent.)	
)	
)	

On March 22, 2006, petitioner, a federal prisoner, filed a Notice of Appeal, purporting to appeal from the denial of petitioner's motion for reconsideration and from the denial of his petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241.

The court expresses no opinion concerning the timeliness of the Notice of Appeal.

However, the court does conclude that petitioner is entitled to a certificate of appealability with regard to the denial of the petition for writ of habeas corpus. The petition claimed

1 that petitioner is entitled to proceed pursuant to Section 2241
2 because Section 2255 provided an inadequate and ineffective
3 remedy. Petitioner contends that he is actually innocent of the
4 crime of which he is convicted because of the Ninth Circuit's
5 decision in United States v. Cabbacang, 332 F.3d 622 (9th Cir.
6 2003) and because he did not have an unobstructed procedural shot
7 to raise this claim pursuant to Section 2255. The court
8 concludes that petitioner has shown that jurists of reason would
9 find it debatable whether this court was correct in its
10 procedural ruling and that jurists of reason would find it
11 debatable that the petition states a valid claim of the denial of
12 a constitutional right.

13 IT IS SO ORDERED.

14 **Dated: March 24, 2006**
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE